

Park Manor Nursing Home, Inc. and Hospital Employees, Local 1273, Laborers' District Council of Baltimore & Vicinity, Laborers' International Union of North America, AFL-CIO.
Case 5-CA-24143

August 18, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by Hospital Employees, Local 1273, Laborers' District Council of Baltimore & Vicinity, Laborers' International Union of North America, AFL-CIO (the Union) on January 6, 1994, the General Counsel of the National Labor Relations Board issued a complaint on January 26, 1994, against Park Manor Nursing Home, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 26, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint unless good cause is shown. In addition, the complaint affirmatively notes that, unless an answer is filed within 14 days of service all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 22, 1994, notified the Respondent that unless an answer was received by June 28, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Maryland corporation, with an office and place of business in

Baltimore, Maryland, has been engaged in the operation of a nursing home. During the 12-month period preceding the issuance of the complaint, the Respondent derived gross revenues in excess of \$100,000 and purchased and received goods and services valued in excess of \$5000 directly from points located outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time service and maintenance employees employed by Respondent at its 1802 Eutaw Place, Baltimore, Maryland facility who regularly work 15 or more hours per week including food service employees, housekeeping employees, and nursing service employees, but excluding all office clerical employees and all other clerks, physicians, dentists, registered nurses, licensed practical nurses, activities directors, technical and professional employees and supervisors as defined in the Act.

Since in or around 1983, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from November 1, 1988, through October 31, 1991.

At all times since in or around 1983, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

By letters dated October 4 and 21, 1993, respectively, the Union requested that the Respondent meet to negotiate a successor collective-bargaining agreement.

Since about October 4, 1993, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

About October 12, 1993, the Respondent unilaterally changed the terms and conditions of employment of the unit by denying union representatives access to its premises. This subject relates to wages, hours, and other terms and conditions of employment and is a mandatory subject for purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate

and bargain as the exclusive representative of the unit with respect to such acts and conduct.

CONCLUSION OF LAW

By failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees over a successor collective-bargaining agreement, and unilaterally changing the terms and conditions of employment, by denying union representatives access to its premises, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused, since October 4, 1993, to bargain with the Union as the exclusive representative of the employees over a successor collective-bargaining agreement, we shall order the Respondent to bargain with the Union on request. Further, having found that the Respondent has unlawfully changed terms and conditions of employment by denying union representatives access to its premises, since October 12, 1993, we shall order the Respondent to grant representatives of the Union reasonable access to its facilities.

ORDER

The National Labor Relations Board orders that the Respondent, Park Manor Nursing Home, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain over a successor collective-bargaining agreement with Hospital Employees, Local 1273, Laborers' District Council of Baltimore & Vicinity, Laborers' International Union of North America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time service and maintenance employees employed by Respondent at its 1802 Eutaw Place, Baltimore, Maryland facility who regularly work 15 or more hours per week including food service employees, housekeeping employees, and nursing service employees, but excluding all office clerical employees and all other clerks, physicians, dentists, registered nurses, licensed practical nurses, activities directors, technical and professional employees and supervisors as defined in the Act.

(b) Unilaterally changing terms and conditions of employment by denying union representatives access to its premises.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees and, if any understanding is reached, embody the understanding in a signed agreement.

(b) Grant representatives of the Union reasonable access to its facilities.

(c) Post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 18, 1994

James M. Stephens,	Member
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Dennis M. Devaney,	Member
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Margaret A. Browning,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain over a successor collective-bargaining agreement with Hospital Employees, Local 1273, Laborers' District Council of Baltimore & Vicinity, Laborers' International Union of North America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time service and maintenance employees employed by us at our 1802 Eutaw Place, Baltimore, Maryland facility who regularly work 15 or more hours per week including food service employees, housekeeping em-

ployees, and nursing service employees, but excluding all office clerical employees and all other clerks, physicians, dentists, registered nurses, licensed practical nurses, activities directors, technical and professional employees and supervisors as defined in the Act.

WE WILL NOT unilaterally change terms and conditions of employment by denying union representatives access to our premises.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees and put in writing and sign any agreement reached on terms and conditions of employment.

WE WILL grant representatives of the Union reasonable access to our facilities.

PARK MANOR NURSING HOME, INC.